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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91171252
Party	Defendant BAPE CO., LTD.
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Date	08/22/2007
Attachments	Stipulated Protective Order.PDF (12 pages)(314219 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CONVERSE INC.,	:	
	:	
Opposer,	:	
	:	Opposition No. 91171252
	:	
v.	:	
	:	Directed to Serial No. 79/012,813
NOWHERE CO., LTD.,	:	
	:	
Applicant.	:	

**PROVISIONS FOR PROTECTING
CONFIDENTIALITY OF INFORMATION
REVEALED DURING BOARD PROCEEDING**

Information disclosed by any party or non-party witness during this proceeding may be considered confidential, a trade secret, or commercially sensitive by a party or witness. To preserve the confidentiality of the information so disclosed, the parties have agreed to be bound by the terms of this order. As used in this order, the term "information" covers both oral testimony and documentary material.

TERMS OF ORDER

1. Classes of Protected Information.

The U.S. Patent and Trademark Office's Rules of Practice in Trademark Cases provide that all inter partes proceeding files, as well as the involved registration and application files, are open to public inspection. The terms of this order are not to be used to undermine public access to files. When appropriate, however, a party or witness, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations (hereinafter "designating party"). Those who will have access to each designation category are identified in paragraph 3.

Confidential - Material to be shielded by the Board from public access, because the designating party reasonably believes its dissemination to the public may adversely impact the business of the designating party and/or its affiliates.

Highly Confidential - Material to be shielded by the Board from public access and subject to agreed restrictions on access by the parties and/or their attorneys which the designating party believes in good faith constitutes commercially sensitive competitive information, a trade secret or other confidential or proprietary business or financial information and the dissemination of this material is likely to be harmful to the ability of the designating party and/or its affiliates to conduct business in a competitive fashion. The parties expect such designations to be rare.

Trade Secret/Commercially Sensitive - Material to be shielded by the Board from public access, restricted from any access by the parties, and available for review only by outside counsel for the parties and, subject to the provisions of paragraph 4, by independent experts or consultants for the parties. Such material constitutes material the designating party believes in good faith extremely confidential material such as a trade secret or proprietary business information, the disclosure of which without the protections of this Order would likely create a risk of substantial harm to the ability of the designating party and/or its affiliates to conduct business in a competitive fashion. The parties expect such designations to be extremely rare.

Protected Information - Information, documents, or testimony designated "Confidential," "Highly Confidential," or "Trade Secret/Commercially Sensitive" in accordance with this Order.

2. Information Not to Be Designated as Protected.

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; or (d) is publicly disclosed by a non-designating party with the written approval of the designating party.

3. Access to Protected Information.

The provisions of this order regarding access to Protected Information are subject to modification by written signed agreement of the parties or their attorneys, or by motion filed with and approved by the Board.

Judges, attorneys, and other employees of the Board (collectively, the "Judges and Board Employees") are bound to honor the parties' designations of information as protected but are not required to sign forms acknowledging the terms and existence of this order. Nothing in this Order is intended to limit the information that can be provided to the Judges and Board Employees. Court reporters, stenographers, and video technicians who may be employed by the parties or their attorneys to perform services incidental to this proceeding will be bound only to the extent that the parties or their attorneys make it a condition of employment or obtain agreements from such individuals, in accordance with the provisions of paragraph 4.

- **Attorneys** for parties are defined as including in-house counsel and outside counsel engaged in this proceeding, including support staff operating under

counsel's direction, such as paralegals or legal assistants, secretaries, and any other such employees or independent contractors operating under counsel's instruction.

- **Independent experts or consultants** include individuals retained by a party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the party or its attorneys.
- **Party/Parties** shall include the officers, directors, managers, and employees of the parties to this proceeding.

Attorneys and two designated corporate representatives for each party shall have access to information designated as **highly confidential**, subject to any exceptions agreed upon by the parties in writing. **Outside counsel, but neither in-house counsel nor parties,** shall have access to information designated as **trade secret/commercially sensitive**. **Independent experts or consultants** that have been retained for consultation or for testimony in this proceeding may be afforded access to **confidential** or **highly confidential** information, but only after the procedures set forth in paragraph 4 have been completed. **Trade secret/commercially sensitive** information may be disclosed to **independent experts or consultants** that have been retained for consultation or for testimony in this proceeding on an issue to which the information to be disclosed relates, but only after the procedures set forth in paragraph 4 have been completed.

4. Disclosure to Independent Experts or Consultants.

Prior to disclosure of Protected Information by any party or its attorney to any **independent expert or consultant**, the **independent expert or consultant** shall first be informed of the existence of this order and provided with a copy to read. The **independent expert or consultant** will then be required to certify in writing that the order has been read and

understood and that the terms shall be binding on the **independent expert or consultant**. No **independent expert or consultant** shall receive any Protected Information until the party or attorney proposing to disclose the information has received the signed certification from the **independent expert or consultant**. A form for such certification is attached to this order. The party or attorney receiving the completed form shall retain the original.

Notwithstanding the foregoing, Protected Information received from a designating party shall not be disclosed to any independent experts or consultants who are in-house employees of a competitor of the designating party, without providing the designating party with prior written notice of the proposed disclosure. Such notice shall include the name, address, and occupation of the independent expert or consultant. The party or its attorney receiving the notice shall have ten (10) business days to object to disclosure to the independent expert or consultant. If objection is made, then the parties shall attempt to resolve the dispute in good faith before raising the issue before the Board.

5. Responses to Written Discovery.

Any discovery requests or responses under Federal Rules of Civil Procedure 33, 34 or 36, and which the responding party reasonably believes to contain Protected Information, shall be prominently stamped or marked with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of Protected Information not in accordance with the provisions of paragraph 11.

6. Production of Documents.

If a party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring party, then the copies shall be prominently stamped or marked, as necessary, with the appropriate designation from paragraph 1. If the responding party makes documents available for inspection and copying by the inquiring party, all documents shall be considered as "**Trade Secret/Commercially Sensitive**" during the course of inspection. After the inquiring party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of Protected Information not in accordance with the provisions of paragraph 11.

7. Depositions.

Documents containing Protected Information and produced during a discovery deposition, or offered into evidence during a testimony deposition, shall be orally noted as such by the producing or offering party at the outset of any discussion of the document or information contained in the document. In addition, the documents must be prominently stamped or marked with the appropriate designation.

During testimony that discloses any Protected Information, the interested party may make oral note of the protected nature of the information.

The transcript of any deposition and all exhibits or attachments shall be considered "**Trade Secret/Commercially Sensitive**" for 30 days following the date of service

of the transcript by the party that took the deposition. During that 30-day period, either party may designate the portions of the transcript, and any specific exhibits or attachments, that are to be treated as protected, by electing the appropriate designation from paragraph 1. Appropriate stampings or markings should be made during this time. The parties may also make the appropriate designations during the course of the deposition. If no such designations are made, then the entire transcript and exhibits will be considered unprotected.

8. Filing Notices of Reliance.

When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who disclosed the information, so as to maintain the protected status of the information.

9. Briefs.

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss Protected Information, whether information of the filing party, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 11 of this order.

10. Handling of Protected Information.

Disclosure of information protected under the terms of this order is intended only to facilitate the prosecution or defense of this case. All such disclosed information shall be used solely for the purposes of this case. The recipient of any Protected Information disclosed in accordance with the terms of this order is obligated to maintain the confidentiality of the

information and shall exercise reasonable care in handling, storing, using or disseminating the information.

11. Redaction; Filing Material With the Board.

When a party or attorney must file Protected Information with the Board, or a brief that discusses such information, the Protected Information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is effected. Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily confidential material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing confidential material be effected when only some small number of pages contain such material. In contrast, if almost every page of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal. Occasions when a whole document or brief must be submitted under seal should be very rare.

Protected Information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

CONFIDENTIAL

This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

12. Acceptance of Information; Inadvertent Disclosure.

Acceptance by a party or its attorney of Protected Information shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing party intended to designate as Protected Information or privileged shall not constitute waiver of any right to claim the information as protected upon discovery of the error. If a disclosing party corrects an error in designation, the receiving party shall thereafter treat the Protected Information in accordance with the corrected designation. Any inadvertently produced documents, and all copies thereof, shall be returned to the disclosing party upon request within ten (10) business days, and no use may be made of such documents thereafter. If the receiving party had already provided the Protected Information to persons who would not otherwise have had access to the Protected Information but for the inadvertent disclosure, the receiving party shall recall the inadvertently disclosed Protected Information, to prevent further disclosure of the Protected Information to persons not entitled to access to it under the corrected designation.

13. Challenges to Designations of Information as Protected.

If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences, the party challenging the

designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as protected must be made within thirty (30) days of receipt of the Protected Information by the receiving party, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging party will be expected to show why it could not have made the challenge at an earlier time.

The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

14. Board's Jurisdiction; Handling of Materials After Termination.

Within 30 days after the final termination of this proceeding, the parties and their attorneys shall return to each disclosing party the Protected Information disclosed during the proceeding, except that the parties' outside counsel may retain for their records copies of work product, such as correspondence, briefs, memoranda, summaries, and the like, that discuss or in any way refer to such information. In the alternative, the disclosing party or its attorney may make a written request that such materials be destroyed rather than returned.

The Parties agree to be contractually bound by the terms of this Order. If the Board orders that the parties abide by the terms of this order, they may subsequently agree to modifications or additions, subject to Board approval.

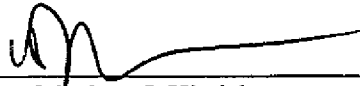
15. Other Rights of the Parties and Attorneys.

This order shall not preclude the parties or their attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall the order preclude the filing

of any motion with the Board for relief from a particular provision of this order or for additional protections not provided by this order.

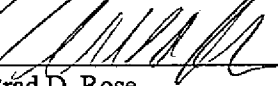
By agreement of the following:

Date: 6/13/07

By: 
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Attorneys for Opposer,
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Date: 8/22/07

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Counsel for Applicant
NOWHERE, Co. Ltd.

By Order of the Board, effective _____

[print or type name and title of Board attorney or
judge imposing order]

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

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Opposer,	:	
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v.	:	
	:	Directed to Serial No. 79/012,813
NOWHERE CO., LTD.,	:	
	:	
Applicant.	:	

**ACKNOWLEDGMENT OF AGREEMENT OR ORDER
PROTECTING CONFIDENTIALITY OF INFORMATION
REVEALED DURING BOARD PROCEEDING**

I, _____, declare that I have been provided with a copy of the Agreement or Order regarding the disclosure of, and protection of, certain types of information and documents during and after the above-captioned opposition proceeding before the Trademark Trial and Appeal Board.

I have read the Agreement or Order and understand its terms and provisions, by which I agree to be bound. Specifically, I agree to hold in confidence any information or documents disclosed to me in conjunction with any part I take in this proceeding.

I declare under the penalty or perjury that these statements are true and correct.

[signature]

[title, if applicable]

[date]